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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Documents submitted in compliance with a special decision of the Committee*

ISRAEL

[8 August 1994]

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* By a decision of 7 March 1994, the Committee requested the Government of Israel to submit an urgent report on measures taken to guarantee the safety and protection of the Palestinian civilians in the occupied Palestinian territory and to bring to an end the illegal action of Israeli settlers and to disarm them. The present documents constitute the urgent report requested by the Committee. The annexes to them are available for consultation in the files of the Centre for Human Rights.

I. Note verbale dated 8 August 1994 from the Permanent Representative of Israel to the United Nations Office at Geneva addressed to the Secretary-General

The Permanent Representative of Israel to the United Nations Office at Geneva presents his compliments to the Secretary-General of the United Nations and has the honour to acknowledge the Secretary-General's note verbale of 28 June 1994, reference No. G/30237/2 (2), recalling the decision of the Committee on the Elimination of Racial Discrimination, taken at its forty-fourth session, requesting the Government of Israel "to submit an urgent report on measures taken to guarantee the safety and protection of Palestinian civilians in the occupied Palestinian territory and to bring to an end the illegal action of Israeli settlers and to disarm them".

This decision was transmitted to the Government of Israel in the Secretary-General's note verbale of 16 March 1994. To this note the Permanent Representative of Israel replied in his note verbale of 31 March 1994, in which the Secretary-General's attention was drawn to the fact that the Government of Israel had established a "commission of inquiry, in accordance with the Commission of Inquiry Law 1968, regarding the massacre at the Tomb of the Patriarchs in Hebron on 25 February 1994". The Permanent Representative added that, as a matter of courtesy, and without regard to the question of the competence of CERD in the matter, a copy of the commission of inquiry's report would be submitted to CERD when it had been issued.

In accordance with the above-mentioned note, another note to the Secretary-General was sent by the Deputy Permanent Representative of Israel on 30 June 1994, with which an English translation of the introduction (chap. 1), the conclusions (chap. 8) and the recommendations (chap. 9) of the commission of inquiry's report was enclosed.

In his above-mentioned note verbale of 28 June 1994, the Secretary-General also informed the Government of Israel of the date scheduled for the consideration by the Committee of the information requested in the said decision, namely, 10 and 11 August 1994.

Although different views have been expressed up in the Committee in the course of the years, it has always been Israel's position that the Convention on the Elimination of All Forms of Racial Discrimination does not apply to the administered areas (see the Israeli Representative's statements made during the consideration of Israel's fourth, fifth and sixth reports). Thus, although Israel recognizes its responsibility to comply with the provisions of humanitarian law in relation to these areas, it has not included these areas in its report to the Committee under the Convention.

Furthermore, in addition to its lack of territorial jurisdiction, the Committee's substantive jurisdiction in the matter of the massacre in Hebron is also highly questionable. The massacre, committed at the Tomb of the Patriarchs in Hebron on 25 February 1994, was the action of a single individual, acting alone (as was determined by the Commission of Inquiry). It is a very forced interpretation to bring isolated criminal acts committed by individuals within the scope of the Convention.

It is the Government of Israel's understanding that the request for a special report from Israel in such a case is unique in the history of the Convention. Previous requests for special reports have related only to events perpetrated by governmental agencies or large groups of people.

In addition, Israel feels obliged to express its concern at the wording used in the Committee's decision which reaches conclusions (such as the massacre being committed by "settlers" - a determination which the Commission of Inquiry found to be untrue) and suggests solutions before receiving information or holding a hearing. This wording would seem to pre-empt the hearing and render it superfluous.

However, notwithstanding Israel's view that this matter falls outside the jurisdiction of the Committee, the following list of measures taken by the Israeli authorities in the aftermath of the massacre, is supplied as a matter of courtesy.

It should be noted that the list of measures which follows is not complete, since the commission of inquiry only recently submitted its report. Thus, while the Government of Israel has decided to act in accordance with the recommendations contained in the report, the implementation of some of them requires further study by the relevant authorities.

Steps taken by the Israeli authorities

1. The Knesset and the Israeli Government as a whole unequivocally denounced the massacre. It was condemned by leading figures in Israel, among them President Ezer Weizman, Prime Minister and Defence Minister Yizhak Rabin, Foreign Minister Shimon Peres and Chief Rabbis Eliahy Bakshi Doron and Yisrael Meir Lau.

2. A Government decision was passed to ensure compensation to the families of the victims.

3. The Cabinet decided, given the extraordinary circumstances involved, to establish a commission of inquiry regarding the massacre (Cabinet communiqué, 27 February 1994). This was an independent commission, established in accordance with the Commissions of Inquiry Law of 1968. The commission was chaired by the President of the Israel Supreme Court and comprised five members, Jewish and Arab, at the highest level. The commission held 31 sessions and heard evidence from 106 witnesses. It also engaged in a thorough examination of the Tomb of the Patriarchs and the surrounding area.

4. After the publication of the commission's report, the Government held a special meeting in which it decided to adopt the report and take upon itself to act in accordance with its recommendations. The Cabinet asked the Prime Minister and Minister of Defence to bring proposals for the implementation of these recommendations before it as soon as possible and decided to hold a detailed discussion of the report once the proposals had been submitted. Methods of implementation of the commission's findings are currently being explored by all the competent authorities.

5. Furthermore, at its meeting of 27 February 1994, the Cabinet decided to take the following measures against radical elements among the Israeli residents in the West Bank:

(a) The issue of administrative detention orders against those who instigate or by their actions present a danger to public security;

(b) The extension of restraining and supervisory orders against the entry of certain persons suspected of instigation into the Judea, Samaria and Hebron areas; and

(c) The disarming of specific individuals suspected of using weapons for purposes other than self-defence and the cancellation of their permits to carry weapons.

6. It was further decided to authorize the Attorney-General to prepare the legal basis for the outlawing of the extremist Jewish organizations "Kach" and "Kahana Chai". Accordingly, at its weekly meeting on 13 March 1994, the Cabinet declared the above-mentioned movements to be terrorist organizations, as well as any other groups acting to achieve similar aims by similar means, even if they bore different names or designations. This declaration also applied to factions or groups attached to the above-mentioned organizations.

7. The Government also reaffirmed its commitment to promote maximum security for all residents, to exercise its full authority to prevent a repetition of any acts of murder, and to continue to act to prevent harm to Jews and Arabs. The IDF and security forces have been directed to act accordingly.

8. In addition to the above-mentioned steps, and in accordance with Security Council resolution 904, it was agreed between Israel and the Palestinians, in an agreement signed at Cairo on 31 March 1994, that in response to the unique situation created in Hebron in the aftermath of the massacre, a temporary international presence would be established in the city of Hebron ("TIPH"). This temporary presence, consisting of representatives from Norway, Denmark and Italy, has assisted in promoting stability and in monitoring and reporting the efforts in the city of Hebron, and has contributed to a feeling of security among Palestinians in the city of Hebron.

9. Finally, the negotiations between Israel and the PLO led to the signing of the historic agreement on the Gaza Strip and the Jericho area on 4 May 1994. Pursuant to this agreement, the region has witnessed the withdrawal of Israeli forces from the Gaza Strip and the Jericho area. The establishment of a Palestinian authority with extensive civilian powers and its own police force in these areas marks the dawn of a new era in Israeli-Palestinian relations. Negotiations between Israel and the Palestinians have now moved to the next stage, the discussion of "early empowerment" i.e. the transfer of further areas of authority to the Palestinians throughout the administered territories.

In conclusion, the Permanent Representative of Israel would note that the massacre in Hebron was a human tragedy and could have been a major obstacle to

the continuation of the peace process. With considerable effort the two parties have overcome the obstacles presented by the murder both of Palestinians and of Israelis in terrorist acts, and have been able to continue the peace negotiations. It is to be hoped that the international community will have the understanding and wisdom to support the parties in their historic efforts, and not raise additional obstacles by unnecessarily reopening the wounds of the past.

A number of relevant documents have been attached as an annex to this Note.

II. EXCERPTS FROM THE REPORT OF THE COMMISSION OF INQUIRY INTO THE MASSACRE AT THE TOMB OF THE PATRIARCHS IN HEBRON

Chapter 1. Introduction

1. Following the massacre in the Tomb of the Patriarchs in Hebron which occurred on 14 Adar, 5754 - 25 February 1994, the Government decided on 16 Adar, 5754 - 27 February 1994 to appoint a Commission of Inquiry. On 17 Adar, 5754 - 28 February 1994, after consultation with the President of the Supreme Court, it was decided that the Commission would consist of five members. On 17 Adar, 5754 - 28 February 1994, the President of the Supreme Court, Justice Meir Shamgar, decided that he would serve as Chairman of the Commission, and that its other members would be: Justice Eliezer Goldberg, Judge Abed el-Rahman Zouabi, Professor Menachem Ya'ari and Lieutenant General (res.) Moshe Levy. The Commission began hearing evidence on 25 Adar, 5754 - 8 March 1994. Judge Alon Gillon was appointed as the Commission's Coordinator. In accordance with section 13 of the Commission of Inquiry Law, 5729 - 1969, the Chairman of the Commission appointed investigators to collect information; Attorney Michael Shaked of the Attorney-General's office served as the coordinator of the investigators. Attorney Dafna Beinwall of the Attorney-General's office and Deputy Commander Anton Iyov, Inspector Armand Edri and Inspector Daniel Israel of the Israel Police worked with him.

2. The Commission heard most of the testimony in sessions that were open to the public.

3. The Commission held 31 sessions and heard evidence from 106 witnesses, some of them at the Commission's initiative and some at their own request. The complete or partial testimony of 16 witnesses was heard behind closed doors. During one of the first days of its activities, the Commission engaged in a thorough and detailed examination of the Tomb of the Patriarchs and the surrounding area.

4. The Commission made a public announcement requesting that anyone who wished to testify before the Commission, or present it with documents or exhibits, make their intention known to it in writing, for that purpose. Each of the 167 requests was discussed and the appropriate procedure to be followed concerning it was determined.

5. The Commission received 1,140 exhibits, 37 of them written testimony collected by the investigators and the rest orders, documents, files, books, findings from the scene of the crime, expert opinions, photographs, etc. All of this material has been catalogued in files according to a filing number which appears in the full contents.

6. After the hearing of testimony was concluded, the Commission considered whether it was required to provide notices in accordance with section 15 of the Commission of Inquiry Law, 5729 - 1969. After deciding that it was not required to do so, and that the material which was before it was sufficient to allow the findings to be summarized, conclusions to be drawn and recommendations made, this report was prepared.

Jerusalem, June 1994

Chapter 8. Conclusions

1. Order of contents

7. The Commission's conclusions will primarily follow the order in which the findings were presented, in addition to an overview of the different issues which it discussed. Therefore, we will refrain from repeating all of the reasoning for our conclusions which was covered in earlier chapters. The conclusions will be presented in the following order: responsibility for the killings and whether the assailant had an accomplice; deployment of the security forces and the actions of those directly involved in overseeing the Tomb of the Patriarchs; medical treatment of the injured; Border Police and Police actions; initial assessment of the situation; carrying weapons inside the Tomb; procedures for prayer services; regulations governing opening fire; application of the law.

8. The recommendations will be based on the lessons drawn from our conclusions presented below.

2. Responsibility for the killing and whether the assailant had an accomplice

9. Dr. Baruch Goldstein bears direct responsibility for the massacre because the evidence unequivocally indicates that he carried it out. Furthermore, all stages of the event, including his preparations and behaviour on the morning of 25 February 1994, as well as both general and specifically ideological conversations which he conducted with others, such as the arguments with Mr. Meir Lapid (exhibit 1088), and an interview with a foreign correspondent early in February 1994 (exhibit 1092), indicate that his actions were premeditated.

10. The evidence presented to us indicates that he acted alone. We were not presented with credible proof that he was helped, while carrying out the killing or prior to that time, by another individual acting as an accomplice, nor was it proven to us that he had secret partners. According to the evidence before us, his wife also was not aware of the matter. The complete secrecy and the decisiveness of his independent act also match the character and behaviour of this assailant, as it emerged from the evidence before us, the gist of which appears in Chapter 2.4 [in the full Report, in Hebrew]. In order to achieve his goal, he took full advantage of the prestige and trust he had acquired while serving as a doctor and reserve officer. His appearance at the Tomb, in uniform, bearing the insignia of his rank, created an impression designed to remove all obstacles from his path. Most of those present were also used to seeing Goldstein occasionally when he came for early morning prayer services. Consequently, his presence at the Tomb did not raise any suspicion or concern, nor draw any particular notice. In that connection, it must be emphasized that those guarding the Tomb did not receive any warning regarding an expected attack by Jews against Muslim worshippers at the Tomb. In contrast to this, warnings were issued regarding an expected attack by Hamas following the distribution of its leaflets in Hebron.

11. As mentioned, we have no evidence before us indicating the existence of an accomplice who knowingly provided backing or cover for Goldstein's actions in the Tomb.

12. Mention was made of an anonymous individual, carrying a Glilon rifle, whom the two soldiers on guard duty next to the East Gate, Kobi and Niv, testified to having seen as he approached the Tomb via the Jawalya corridor. According to them, the anonymous individual arrived after Goldstein and before Eli Ganon, the driver of the "garbage truck". Since he was an unfamiliar face, the suspicion arose in retrospect, that this may have been Goldstein's accomplice, who carried a Glilon for him or perhaps assisted him in some other way. However, other than these two soldiers, the questioning of the other witnesses did not reveal that they saw an individual carrying a weapon as Kobi and Niv had described: the individual was not seen by those guarding the main gate, by Lieutenant Ravivi, or by anyone else who was at the Tomb that morning, including the Waqf guards - who know most of the members of the early morning prayer group or at least recognize their faces - and those praying in the Abraham Hall. Furthermore, the statement that perhaps the person described above was seen sometime close to the arrival of Eli Ganon at the Tomb and after Goldstein's arrival, contradicts the information given that Eli Ganon arrived around 0445, while Goldstein only arrived at 0520 in the Abraham Hall. After the massacre, a list of the names of all those present in the Abraham Hall was made; all were known to the military personnel, and all testified before us and none of them was carrying either a Glilon or an M-16 rifle on that morning.

13. Neither did anyone see the person described above as he left the Tomb; none of the Muslim worshippers testified that there was a Jewish worshipper carrying an M-16 rifle (assuming that he had handed the Glilon to Goldstein and received the M-16) in the stream of those exiting via the Jawalya corridor. In contrast, there were those who saw a worshipper from the early morning prayer service (Shaul Kandy) who entered the Tomb, on his way from the rest room, while the stream of Muslim worshippers was rushing forth to get outside. No one found an M-16 rifle in the Tomb, but had it been replaced with Goldstein's Glilon and not been taken out of the Tomb, it would have had to turn up inside. As was mentioned, the evidence showed that the reports communicated via walkie-talkie regarding an M-16 and a pistol which were supposed to be next to Goldstein's body and which disappeared, ostensibly, were also based on the statements by Kobi and Niv in which Goldstein, in their opinion, was carrying an M-16 rifle and not a Glilon.

14. The point is that no one saw an unknown individual, as described above, engaged in any act which can be understood as aiding Goldstein, nor were any shell casings found to indicate the possibility that shots were fired from an additional weapon in the Isaac Hall. On the steps outside the Tomb next to the main gate, a single shell casing was found and mistakenly put in with the shell casings gathered from the Isaac Hall. In Chapter 2 [in the full Report, in Hebrew] above, we discussed the reasons for the mixing of this casing with the other casings in one bag. Indeed, all of the casings gathered were identified by the weapon from which they were fired, except one. Furthermore, there is no reason to assume that while the casings were being collected, the specific casings belonging to the weapon of another person were the ones which disappeared; all 5.56 mm casings are identical from the outside and only a

forensic analysis can identify which weapon it belongs to. It is therefore not possible to selectively gather from the floor 5.56 mm casings from a specific weapon in order to hide them. There was also no physical opportunity to carry out such a collection, certainly not while the Muslim worshippers were still in the Hall, and not afterwards either, after the soldiers and police officers had entered the Hall. The single casing found on the outside stairs must therefore, apparently, be the unidentified casing from the bag of casings gathered at the scene of the crime. In addition, the casing found on the stairs cannot be the casing of a bullet fired from Goldstein's Glilon: it was proven that no one fired before the massacre, and after the massacre, the Glilon was already hidden beneath the bookcase of Koranic texts in the Isaac Hall.

15. No fragments of a hand-grenade were found in the Hall nor were there signs of damage caused by grenade fragments in the walls. No hand-grenade fragments were found in the bodies of the injured who were operated on or x-rayed.

16. Those Muslim worshippers who turned around after the shooting started, clearly saw only one gunman in the Hall, whom they described. Their descriptions of his face and image exactly matched those of Goldstein; some of the worshippers had even recognized him before this. The connection to Goldstein also follows from the sequence of events, since the person whom the Muslim worshippers identified as the gunman, was later attacked by some members of the congregation and killed. The worshippers who assaulted Goldstein before he was killed did not claim at the same time, that there was another gunman in the Hall, or that there was someone shooting to provide cover for Goldstein.

17. A few of the Muslim worshippers did indeed testify that they heard shots from another source, or which sounded differently, and there was also someone who said he saw soldiers shooting into the Isaac Hall from its main entrance. However the questioning of witnesses, or of those who submitted statements, as the case may be, in order to investigate the credibility of their version, did not convince us of the credibility and truth of this claim; rather it did the opposite. Thus for example, Haj Ahmad Nasr (p. 2,247), claimed that he saw the half-inch barrel of a weapon inserted into the Isaac Hall from an opening in the door of the Abraham Hall. But, in effect, while testifying before us, he retracted his description, which also did not correspond to the [physical] circumstances of the site, in which there is no opening similar to the one which he described, in the door separating the Abraham Hall and the Isaac Hall (photo exhibit 324). Rafet Fahmi el-Kerki also referred to an aperture in the door separating the Abraham Hall and the Isaac Hall (p. 1,242), although there is no such aperture. Abd el Hafez Salman al-Jibri (p. 1,148), testified before us about, "six or seven gunmen", yet could not explain why he did not mention such a crucial fact when he gave a statement to the Police shortly after the massacre took place. The testimony of Muhamed Musbah Al-Jibri and Zalah Iyash Al-Jibri contained contradictions between testimony which was presented before us, and that presented previously in written statements taken shortly after the massacre. Yusri Mahmud Musa al Jimail described the sound of two different types of shots (one light and one heavy); thus, according to him, two different types of weapons were used, yet this does not at all correspond with the findings, such as the kinds of casings gathered in the

Hall. Of course, it is possible that the witness erred in assessing the link between the different sounds of the shots and the differing distances from the source of the shooting, and that he perceived the shots fired from the Jawalya corridor as coming from inside the Isaac Hall. Incidentally, this witness broke the law in telling a blatant falsehood: according to him, soldiers fired intentionally on anyone who left the "pishpesh" door in the direction of the Jawalya corridor (p. 1,080). No other witness made such a claim and the other evidence proved that this never happened.

18. Therefore, the allegations that shots with different sounds were heard, that the barrel of a weapon was inserted through an opening from the Abraham Hall; accounts of the presence of three, six or even seven gunmen; as well as other similar claims made by some of the Muslim worshippers were inconsistent, and have not been substantiated. Nor have they been in any way supported by the Waqf workers, Salmon or Abu Salah.

19. Perhaps the fact that the versions provided by the Muslim worshippers were inconsistent and unfounded in comparison to the objective facts should not surprise us: following a traumatic event such as was experienced by the worshippers in the Isaac Hall - with casualties falling all around them, and their own lives in danger - it is often difficult to be precise, uniform and consistent in the recollection and description of events (as in the "Rashomon" syndrome); in addition, some of the witnesses may have wished to place the responsibility for the events on the shoulders of all the military personnel and all of the Jewish worshippers present at the Tomb at the time.

20. Needless to say, had there been an additional gunman standing at the main entrance to the Isaac Hall, as has been claimed, worshippers would have attempted to escape by a different route.

21. There remains, of course, the possibility that the unknown individual arrived at the site only to carry Goldstein's Glilon, and to exchange it before the shooting with the M-16 supposedly carried into the Tomb by Goldstein, or in order to assist Goldstein in some other way (such as the opening of the Yosefiya door). If we examine this possibility, it is not clear why Goldstein, who did not conceal his identity, would want to carry a weapon other than his personal one, especially as it seems clear from the events that he had intended to use the Glilon for the shooting; why then would he have wanted to exchange weapons?

22. In conclusion, the fact that only Kobi and Niv saw an unknown individual, and no one else saw him either entering, exiting or moving within the Tomb, raises doubt both as to the accuracy of their reconstruction, and as to their attribution of the matter to the day in question. Kobi and Niv may have simply been mistaken in ascribing the arrival of this unknown person to the day of the massacre, as before the shooting there was nothing to call their attention to specific individuals entering the site.

23. As already mentioned, there is no evidence that a hand-grenade was thrown; (in light of tests of sounds made by shooting described in the expert opinion of Lieutenant Colonel Isser Wexler of the ordnance corps; exhibit 1,096), the loud noise heard at the beginning of the shooting could have been the result of two shots having passed close to the microphone near

the mehrab (podium) serving the Imam, so that the microphone might have amplified the noise and made it sound like that of an explosion. It should be mentioned here, that the marks made by the impact of two bullets were found inside the mehrab and in a nearby wall.

24. Our conclusion is that the evidence before us does not support the conclusion that an additional person was present, who shot at the Isaac Hall or into it, or that Goldstein had an accomplice, or an assistant at the Tomb. The evidence before us indicates that Goldstein acted alone.

25. The question arises, of whether the [Jewish] worshippers from the early morning prayer group at the Abraham Hall helped Goldstein by giving tacit consent to the opening of the door leading from the Abraham Hall to the Isaac Hall, in order to enable Goldstein to enter the Isaac Hall. This theory was brought up in Second Lieutenant Ravivi's first statement. The worshippers, all of whom have been questioned in the matter, have denied this entirely. Most of them also claimed that they had not seen Goldstein in the Abraham Hall, although it is clear that he had been there that morning, as three members of the prayer group testified to that effect, and since that Hall is where Goldstein's bag was found. Clearly, a denial of the opening of the door is not sufficient to dismiss the possibility that this is in fact what happened. However, this issue is linked to the broader question of how Goldstein entered the Isaac Hall.

26. A detailed analysis of Goldstein's entry into the Isaac Hall appears in Chapter 2 [in the full Report, in Hebrew], where we also reviewed the three possible routes of entry, and discussed the considerations supporting or contradicting the use of each of them. The routes are: the main entrance, the door connecting the Abraham and the Isaac Halls, and the door leading from the Yosefiya Hall to the Isaac Hall.

27. As mentioned previously in Chapter 2 [in the full Report, in Hebrew], we cannot rule out the possibility that Goldstein entered via the main entrance to the Isaac Hall, without Ravivi noticing. None the less, we rejected Abu Salah's theory as not credible, and we enumerated the contradictions in his statements - including those between his statement and that of the head of the security detail, Hashalmon - and the absence of logic in his version of his movements before and after the shooting began. We also accept Ravivi's claim that he was in the plaza during the critical period, that is, from the time Goldstein reached the plaza and the inner courtyard around 0520, until the shooting began. Ravivi's version of this is supported by additional witnesses, among them the head of the Waqf guard, Hashalmon, as well as Muslim and Jewish worshippers.

28. However, it is possible, for example, that Goldstein passed through the plaza en route to the main entrance of the Isaac Hall behind Ravivi's back while the latter was approaching the wicket door, and therefore Ravivi did not notice Goldstein. Ravivi's remarks indicate that he did not remain stationary next to the wall of the Sarah Hall, but rather that he roamed - as he was permitted to do - back and forth within the plaza and even approached the wicket door.

29. It is also possible that Goldstein's movements, as reviewed in retrospect and in light of what we now know, did not on that morning, in Ravivi's eyes attract any particular attention. Ravivi explained, as mentioned previously in Chapter 2.4, that Goldstein as a doctor and as a reserve officer, accepted by the army authorities, did not raise any suspicions whatsoever. At the same time, Ravivi thought that Goldstein could not pass behind him in the relatively small plaza without his noticing, even if he (Ravivi) was moving from the wall of Sarah Hall to the wicket door.

30. Also reviewed was the possibility, which was analysed at length in Chapter 2 [in the full Report, in Hebrew; sections (32) and (34) (6) and (7)], that Goldstein chose to enter via the Yosefiya [passage]. There he could open the door without drawing the attention of the soldiers on guard, the Jewish worshippers, or the Waqf guards, while at the same time leaving himself an opening through which to escape.

31. Entry via the Abraham Hall is also a theoretical possibility. However on the side of the Isaac Hall, as described in Chapter 2 [in the full Report, in Hebrew], obstacles were placed, among them a heavy chair and a wooden beam, in order to make opening the door difficult. Moving these objects might have caused the Muslim worshippers next to the northern wall inside the Isaac Hall to take early notice of the opening of the door. Taking into account Goldstein's familiarity with all of the activities in the Tomb, he surely also knew that there usually was a ladder placed there which would prevent the opening of the door.

32. The conclusion concerning this point, as noted in Chapter 2 section (34) (8) is that we have no reliable proof of how Goldstein entered the Isaac Hall: all three alternatives are possible, but of the three, entry via the main entrance or via the Yosefiya door are the most likely. In the absence of conclusive evidence, it is not possible to reach a more decisive determination.

3. Deployment of the Security Forces

33. Based on the evidence before us, there is no reason to suspect Major Stellman, First Lieutenant Biton, Second Lieutenant Ravivi or any of the soldiers on duty in the Tomb that morning of knowingly collaborating with Goldstein or of facilitating his actions.

34. According to the evidence, there is also no reason to see Edelstein, the reserve soldier in the operations room, or Ungar, the driver of the security jeep, as aiding Goldstein while knowing of his intentions and his target.

35. The separate issue of whether any one of those in positions of responsibility was negligent in carrying out his duties must be examined.

36. The posting of soldiers on duty was carried out in accordance with procedures: the shift's arrival, the drill at 0200 and the opening of the East Gate followed the regulations. However, according to the Brigade's standing order, any given guard detail had to have been in the Tomb 24 hours a day, that is, throughout the entire night as well (see section 5 of the chapter on standing orders for guards inside the Tomb, by order of the

Judea Brigade-1994; see also appendix d of the 1991 order and an identical instruction in the 1982 order). This order was not carried out, because the shift only entered the Tomb at around 0400. This shortcoming was a result of the general arrangements for guard duty, and does not apply solely to this shift. This, of course, had no practical effect whatsoever on the massacre which was committed at 0530 by someone who entered the Tomb at 0520, yet there was a failure to carry out the letter of the order.

37. The manner in which those entering the Tomb were checked was not as it should have been, primarily due to technical shortcomings found in the metal detectors installed at the gates which worshippers entered. As mentioned earlier, requests for replacing the metal detectors were submitted to the headquarters responsible, but there was no effective response to the request, and the matter was drawn out due to discussions between the Civil Administration and the Division Command regarding budgetary responsibility and allocation of the expenses involved. As often happens, what is implemented immediately after a tragedy occurs, is not done beforehand. After the massacre, the means were found to finance the acquisition of state-of-the-art metal detectors and the replacement of the closed circuit television system, whose shortcomings were described in Chapter 2 above.

38. As a result of the shortcomings of the metal detectors and despite the warnings of a possible terrorist attack by Hamas, only a minuscule proportion of the male Muslim worshippers of the critical age (between 15 and 45, according to the order), were frisked to prevent arms or explosives from being brought in. The women were not searched at all. Yet the Command at the Tomb did carry out its duty as far as reporting the shortcomings of the metal detectors, since it did appeal to the headquarters in charge several times. The soldiers acted in the accepted way, and without being admonished to change their approach. However, despite this, there was no room for compromising with the reality of the situation. Soldiers are posted at the site, among other things, to check those entering it and if there was a problem with metal detectors, then there was an obligation to supplement the forces at the gates so that an adequate inspection would be conducted, that is, an individual inspection of each person entering. No one was authorized to waive the inspection of individuals entering the Tomb, especially at a time when a warning of a possible Hamas attack had been issued.

39. The lack of effective inspection of Muslim worshippers entering the Cave was a deficiency in the security arrangements.

40. Regarding the faults in the metal detectors and in the closed-circuit television system, it is worth emphasizing that the gathering of reliable, current information about developments in a given organization is of the utmost importance. Reliable information includes reports on shortcomings and faults. Such information, in effect, aids in improving operations and implementing the organization's goals (see also "Do They Intend to Issue a Warning", Maarchot, January-February 1994, p. 7). However, filtering the information on faults which is relayed by the lower command level is the responsibility of the command level. In other words, in the structure of a military organization, each subordinate is obligated to draw his superiors' attention to a shortcoming or problem, but the commanding officer is responsible for dealing with the matter.

41. Issues such as the one before us frequently entail, of course, questions of priorities and the designation of preference in allocating resources. Clearly, more sensitive issues must receive higher priority.

42. Moving from the general to the specific: it is inconceivable how it was possible to maintain effective supervision of a holy site, that is sensitive and fraught with conflict, if state-of-the-art technology capable of preventing anyone from bringing in arms and explosives, was not posted at the entrance. What is required at every airport and any other sensitive facility, is also required at the unique holy site referred to here. This applies also to the constant monitoring of activity inside the Tomb by way of closed-circuit television appropriate to the conditions of the location.

43. Nevertheless, in the matter at hand, there is no connection between the lack of appropriate inspection of the hundreds of worshippers who entered on the morning of 25 February 1994, and the ineffectiveness of the closed-circuit television system, and the massacre. However, since the issue has been raised, we must draw the necessary lesson from it: in sorting out budgetary requests, the response and the pace at which the shortcoming is corrected must take into account its sensitivity, in terms of safety and security. The routine handling of logistical concerns and even financial considerations, must retreat in this case in the face of safety and security concerns. Furthermore, the shortcomings in technical arrangements should have been part of the overall assessment of security at the Tomb.

44. Around 0510, Second Lieutenant Ravivi sent Corporal Jerry Melnick to the generator post in order to replace Sergeant Birman who was then to join Ravivi at the Tomb. Because Melnick left to go to the generator post, Ravivi was in the meantime left alone in the plaza and inner courtyard. No Israel Police officer reported for duty at all. We will return to the level of coordination between the District Police office and the Hebron Police station on the one hand, and the Division and Brigade on the other, although Ravivi could not have changed anything with regard to this matter. Three Border Policemen who were supposed to show up at 0500 to reinforce the guard detail, did not appear. Ravivi did everything he could to verify that the Border Policemen had been awoken at their unit - something which was the responsibility of their immediate commanders - and asked the operations room to contact the Border Patrol camp in order to wake up the Border Policemen so that they could report to the Tomb on time. Around 0500, the Border Police gave him the incorrect reply that the Border Policemen were already on their way. There was no basis for this information, but Ravivi did not know that. Under these circumstances, it was permissible for him to decide that he could carry out the switching of Melnick and Birman, which was also important for raising the level of alertness at the Tomb during critical periods. Of course, had he known that the Border Policemen would not arrive until after 0530, he would have been able to proceed differently, perhaps calling the guard detachment standing by on alert to the Tomb. However, this is mostly wisdom in hindsight; he could not have known that there would be an attack, but had to think how the call up of the detachment on alert, would have been received at 0505 if a minute later the Border Policemen were indeed to arrive, as their unit reported that they would. The information which he had at the time was that the Border Policemen were already on their way from a place a few minutes away from the Tomb; that Sergeant Birman was to arrive at any moment; that two

additional soldiers were in the Jawalya corridor, one of them in eye contact with him; that services in the Isaac Hall were to begin in a few minutes, with all the worshippers already gathered there; and that they would remain there until the conclusion of prayers approximately 40 minutes later.

45. Our conclusion is that the decision not to call up the force on alert was in retrospect not a decision that should have been condemned. Certainly it should not be seen as a negligent one. There is also no reason to conclude that the switching of Melnick and Birman at that specific time was a negligent act.

46. There is no point in getting into minor details. But as a general comment regarding the preparedness of the soldiers, the switching of Melnick and Birman can be questioned, since the walk from the Tomb to the generator and back should have taken around 20 minutes. There is also no justification for the fact that soldiers posted in the Tomb (Kobi and Niv) were sitting on chairs while on duty.

47. The failure of the Border Police and of the Police to show up will be discussed separately.

48. In our opinion, the determining factor is that had the guard detail been comprised of an officer, a sergeant and three Border Policemen inside the plaza and the Abraham Hall (two next to the door to the Isaac Hall and one inside the Isaac Hall) and an Israel Policemen inside the inner courtyard, there would have been a sufficient security force. That would have sufficed to impede Goldstein's efforts to enter Isaac Hall either via the main door or via the Abraham Hall, or even to prevent it altogether. It would not have sufficed to prevent his entering via the Yosefiya Hall, if he did indeed enter from there.

49. The way in which the guards at the east gate, Kobi and Niv acted upon hearing the shots was understandable and reasonable, taking into account what they might have been able to guess and understand about the circumstances. Closing the east gate was necessary according to them, in order to prevent their being overwhelmed by the mob of worshippers, or their being flanked by the person(s) as yet unidentified, doing the shooting. Their firing shots in the air and toward the wicket door was in the nature of a response to the unknown which cannot be dismissed in these circumstances.

50. Once the massacre had occurred, after Goldstein had entered the Isaac Hall, Ravivi did not react immediately, but froze at his post for a short time. This is understandable since he was alone there, while simultaneously the flow of worshippers outside began, and he was cut off from the two soldiers at the east gate.

51. Presumably the presence of a larger number of soldiers in the plaza would, by contrast, have resulted in quicker and more intensive intervention in order to stop Goldstein immediately after he began shooting.

52. To summarize regarding Second Lieutenant Ravivi: Ravivi encountered, in this incident, a combination of circumstances which could not have been anticipated; on the one hand, was Goldstein's murderous plan, which relied

upon the fact that his uniform and his position would facilitate all that he planned to carry out. On the other hand, there was the failure of part of the force that was supposed to be guarding the Tomb to show up and whose absence necessarily weakened the control over what was going on; Sergeant Birman had not yet arrived,the Border Policemen had not yet arrived, the Policeman had not yet arrived. Each of these problems described, resulted from a different cause, each unrelated to the other and not capable of having been coordinated in advance. The coincidence of not reporting for duty, each for a different reason could not have been anticipated, unless one takes into account at the outset, the possibility of insufficient preparedness. Furthermore, this does not refer to an incident whose significance was immediately clearly apparent with the whole picture clear, but rather the opposite. What occurred were absences which were to have ended within a few minutes, if not seconds (meaning, the Border Policemen would show up, Sergeant Birman would arrive, the Policeman would appear), and Ravivi did not know, and could not have known that he should call for reinforcements. In retrospect, the picture naturally appears different.

53. To conclude this point: the absence of the full complement of forces at the time of the massacre was an unfortunate coincidence whose roots lie both in shortcomings in coordination between the forces, and in the level of discipline in some units.

4. Medical Treatment

54. In Chapter 2.5 [of the full Report, in Hebrew], we covered at length the treatment of the injured in the various hospitals and we will not repeat the reasoning on this matter.

55. A determination can be made that there was no basis for the claim that the soldiers at the East Gate delayed the transfer of the injured from the Isaac Hall to the main gate, except for the initial few seconds after the shooting started, that is - until the soldiers at the East Gate understood the significance of what was going on. There was also no delay in the transfer of injured from the gate of the Tomb to the hospitals, despite its being carried out by improvised means (regular civilian cars commandeered in the area or called to the Tomb).

56. The claim of Dr. Stati of El-Mokassed hospital regarding the refusal of Hadassah hospital to accept injured, which was broadcast on Israel Radio and afterward all around the world, was totally unfounded. Moreover, the medical authorities of the military administration, as well as the Health Ministry and Hadassah hospital offered assistance (airlifting to hospitals in Israel, supplying medicines, offering hospitalization in Israel) which were turned down by the non-governmental Arab hospitals for non-medical reasons.

57. The conclusions of the French and Egyptian doctors are not worthy of their authors, since they were based on superficial examinations which appear clearly biased (this issue is elaborated in chapter 2.5, sections (17) and (18) [of the full Report in Hebrew]).

58. In light of this, there is no room for drawing additional conclusions.

5. The Border Police

59. The level of discipline of the groups operating in coordination with the army, upon whose cooperation the army relies, and upon which its deployment is based, is worthy of focused and intensive attention. The picture which emerged we found to be totally unsatisfactory, both generally and specifically.

60. One unit of Border Police which served at the Tomb of the Patriarchs within the framework of the forces providing security at the site, was replaced due to a lack of discipline and to a failure to accept the authority of the IDF officers commanding the guard shifts. The situation which we discovered concerning the conduct of the unit which replaced this first unit, is worrisome. Poor allocation of responsibilities and shifts in advance, waking up late, reporting for duty late, a vehicle in disrepair, contradictions in the instructions given by officers, and other similar circumstances, would be unacceptable in a civilian body charged with any organization function; how much more so in a body of a military nature, which must diligently perform its tasks fully and with precision.

61. Moreover, we have already noted the importance of the soldier's duty to bring deficiencies to his superior's attention. Those in charge at the Tomb of the Patriarchs tacitly accepted a few minutes tardiness in the morning (as occurred on the days preceding 25 February 1994), and did not immediately report the matter, or bring it to anyone's attention. The Border Police commanders were not diligent in checking the Border Policemen's reporting for duty. Army and Border Police commanders thus contributed to the undermining of discipline, the expression of which was, on the critical day, lateness in arriving of about half an hour. Anyone who does not eliminate late arrival of five minutes, can assume that discipline in reporting for duty will deteriorate. Slight tardiness inevitably leads to considerable lateness, and it is only a question of time before a serious mishap occurs. There is no such thing as partial discipline. Moreover, if accompanied by bad luck, the considerable tardiness will occur at the worst possible time.

62. The duty to conduct ongoing inspection of performance, was in this case, the responsibility of both Border Police and army commanders. As the well-known saying goes: "If you have given an order but have not ensured that it is carried out, it is as if you had never given the order." Matters cannot be expected to work themselves out, nor will everything "be okay". Without supervision, it can be assumed that things will not be as they should.

63. In short, those in charge of discipline must act - and quickly - to deal with the root of the problem which led to the fact that the Border Policemen's reporting for duty on time could not be counted upon. A situation must not be allowed to develop, in which there is no guarantee that a given unit will perform its appointed tasks precisely, and on time. It is similarly the responsibility of those who determine procedure, orders and timetables, both in the IDF and the Border Police, to supervise in order to monitor the level of performance of, and compliance with instructions.

64. We have not raised anything new in what we have said here. Rather, we have simply repeated basic and obvious matters, which unfortunately appear to have been neglected.

6. The Israel Police and coordination with the IDF

65. In August 1992, in response to an IDF request (by O.C. Central Command, Major General Danny Yatom), a policeman was stationed at the Tomb. Initially, it was to be for a three-week trial period. Following the instructions of Assistant Commissioner Moshe Mizrahi, it was decided that a policeman would be present on potentially sensitive days, as well as on Fridays and Saturdays. A patrol car was sent on Mondays and Thursdays. The trial period [actually] ended a few months later. In November 1993, the police were asked to expand their activity at the Tomb of the Patriarchs, a request made during a meeting at the office of the late Major General Nehemia Tamari, then O.C. Central Command. In light of this request, Police Assistant Commissioner Mizrahi decided to dispatch a patrol car which would be parked near the Tomb, rather than to post a policeman inside. On 25 January 1994, during a visit of O.C. Central Command Danny Yatom to the Judea brigade, it was agreed, verbally, that a policeman would report for duty at the Tomb every morning. The agreement was not given to the police in writing. On 31 January 1994, Brigade Commander Colonel Meir Kalifi wrote to the commander of the police station in Hebron, reminding him of the O.C. Central Command's visit, and of the agreement regarding the stationing of a policeman at the Tomb, and emphasized the fact that a policeman had not been reporting there for duty. The evidence suggests that this letter, forwarded by the commander of the police station to the Police Assistant Commissioner, was never answered. In short, the Police adopted a different mode of operation, which seemed to them to satisfy the request for the presence of a policeman at the site. This was done without coordinating the method of implementation with the army, and without expressly notifying any authorized army officer in a position of command, neither at the Division, nor at the Brigade, nor at the Tomb, nor at the Company responsible for security at the Tomb. This reflects an unacceptable situation; the failure of the police station to reply to the Brigade Commander's letter concerning the policeman's failure to report for duty at the Tomb was not only rude, but also, and more importantly, an indication of a lack of effective cooperation.

66. On the other hand, the IDF on its part, should have followed up on their unanswered letter, as it was not merely routine correspondence but rather concerned a fault in security arrangements, the rectification of which was of great importance. The IDF should therefore have checked and double checked to get to the root of the problem, until they had received a clear response.

67. In the end, on the day of the massacre, the Police sent neither a policeman nor a patrol car, in keeping with its own procedures, because the patrol car had been summoned to the site of a shooting incident which had occurred at about 0430 that morning. Still, it would have been possible to bring the policeman to the Cave at 0500 without preventing the departure of the patrol car to investigate the shooting incident (which, incidentally, has not been fully investigated to this day due to an error in registering the

victim's name). Furthermore, the policeman responsible for the patrol car, claims that, to the best of his understanding, there was no obligation on the part of the patrol car to appear at the Tomb on Fridays.

68. As has been noted, no one from the military stationed at the Tomb reported the failure of the policemen to show up, despite the fact that this had happened repeatedly between 31 January and 24 February 1994, inclusive, namely, even after Brigade Commander Kalifi wrote his letter to the Police. The letter from the Brigade remained unanswered. The assumption of the Police that it is not subject to the authority of the O.C. Central Command (according to the Police commander), or that it alone determines how its contribution to security arrangements should be carried out (according to the District Commander), without notifying the military, does not constitute coordination or cooperation, but rather represents parallel action along lines which never meet.

69. These events indicate lack of coordination and follow-up and failure to respond to problems.

7. The Command at the Tomb of the Patriarchs

70. On the morning of 25 February 1994 Major Stellman was asleep in his room, which is located in the building immediately adjacent to the Tomb. He was called to the Tomb as soon as the shots were heard.

71. We have considered whether his presence was required from the time of the arrival of the first worshippers, in light of the fact that there had been tension there on the previous evening, which resulted in the angry gathering of many Muslim worshippers. The reason for the tension was an arrangement between the Military Governor and the Waqf, which was not to the liking of some of the Muslim worshippers. According to this arrangement, due to the holiday of Purim and the reading of the Purim Scroll in the Isaac Hall, Muslim prayers in the hall on Friday evening would begin only at 2000. Following an incident in Abu-Dis, which ended in the deaths of a number of members of Az-A-Din Al-Qassam [of Hamas], emotions ran high among the Muslim worshippers (about 200), who shouted hostile slogans ("Qassam!, "kill the Jews") [at the Jewish worshippers], making it necessary to call in army and Border police forces. According to one of the Muslim witnesses, the Jews also shouted hostile slogans. The Jewish worshippers left the Isaac Hall at the appointed time, Muslim prayers began at 2000, and things calmed down. Since this incident occurred during the [Muslim Holy] month of Ramadan, Major Stellman acted that same evening to have one of the [Muslim] inciters, arrested by the police, released. At the close of [the Muslim] prayers there was, according to Major Stellman, no fear of further tension, until the following day, when prayer services of both Jews and Muslims, each with many participants, were scheduled. Nevertheless, in the early morning, at the time when a large Muslim service was scheduled, only a [small] group of Jewish worshippers would be present. He therefore felt there was no danger which required his presence in the Tomb itself.

72. He none the less decided not to take his weekend furlough as planned, and to remain with the unit, along with his second-in-command, at least for Friday.

73. Under ordinary circumstances (even considering the usual tension between the different communities of worshippers in the Tomb), his presence in the complex would have been sufficient, enabling him and his second-in-command to arrive within minutes, as in fact happened.

74. Stellman's decision to remain in his room, but within the complex, was within the boundaries of his discretion. We believe however, that it would have been preferable, if within the boundaries of his discretion, he had chosen to be present at the Tomb during all of the Friday Ramadan payers, at which large numbers of worshippers were expected, taking into account the intelligence reports regarding potential attacks by Hamas. When hundreds of worshippers arrive, one cannot compare the commander's physical presence to the ability to summon him from elsewhere - something which always wastes precious time, during which events do not stop.

75. The presence of the commander of the site, within the Tomb of the Patriarchs on Fridays during [the month of] Ramadan, along with regular contact with the force providing security, could have raised the level of readiness.

8. Initial appraisal of the situation

76. We do not believe that anyone can be blamed for not having foreseen the fact that a Jew would plan and carry out a massacre of Muslims in the Tomb of the Patriarchs. Those in charge of security at the Tomb were given no intelligence reports that an attack by a Jew against Muslim worshippers could be expected, particularly since intelligence reports warned of the opposite: an attack by Hamas. Therefore, there was concern about an attack by Arabs against Jews. At a time when only Muslims were praying, with a mere handful of early-morning Jewish worshippers present - many of whom were not young - in the adjacent Abraham Hall, fear of an attack against Muslim worshippers did not, and need not have occurred [to anyone].

77. Regarding supervision of the entry of worshippers into the Isaac Hall, and the prevention of Jews from entering the Hall, it must be taken into account that, although over the years there have been arguments, sometimes over entry during prayers into one Hall or another, never in the 27 years since 1967, have weapons been used by Jews against Muslims.

78. Of course, after the fact, the picture regarding the specific case at hand appears different, generally speaking.

79. In light of the conclusion which arises from this fact, we did not deem it fit to attribute negligence to any of the various levels of military command responsible for activities within the Tomb. This conclusion however does not render superfluous our recommendations and instructions regarding the appropriate decision-making process with respect to the deployment of security forces in the Tomb and the arrangements employed there.

80. The arrangements within the Tomb, which determined the manner of deployment in the face of any expected danger, were decided upon from time to time at military staff meetings. Emphasizing the principles employed in gathering the data, and examining the subject, serves to underscore the

importance of methodical and focused consideration. Our comments refer to basic issues, which are the province of anyone preparing a situation-assessment.

81. We must preface our comments with a general note. In the military, immediate decisions are often required, which serve as a basis for immediate action. At times, any delay causes harm. There are however, circumstances in which it is possible to thoroughly examine the issue, scrutinize the data, hear all opinions, conduct discussion, and draw conclusions [based upon all of the above]. In other words, not every problem requires a "heat of the battle" decision, and not every issue must be solved during the course of a short patrol, at an accelerated pace. There are subjects which merit consideration and thought by the commanders in charge, prior to taking a decision.

82. The decision-making process should usually comprise a number of essential stages, which are the tangible expression of the exercise of authority while dealing with a defined issue: defining the goal of the situation-assessment; collecting and integrating data (including the various and even contradictory professional opinions, if they exist); examining the significance of the data (which in the case of contradictory premises, also entails examination of their respective merits and faults, including questions of possible cost or damage, and their measurement in accordance with the desired aim); and finally formulating a decision. Such a process ensures that all relevant considerations are taken into account, that every claim is given fair examination, and that a decision is formulated, which can then stand up to the test of judicial and public scrutiny (High Court of Justice 297/82, Berger v. Interior Minister, P.D. 37(3), vol. 29, p. 49).

83. We have made no startling revelations here. Rather, we wished to emphasize that a distinction should be made between cases in which an urgent decision is required, without comprehensive discussion, and those in which orderly situation-assessment is called for. There are cases in which a hasty decision, without examination, carries the danger of failure. One must be able to distinguish between the different types of cases and to enjoy, as far as possible, the advantage of methodical and thorough preparation and thought. Generally, orderly thought and examination are to be preferred to clever improvization.

84. In the case at hand, concerning the Tomb of the Patriarchs, its procedures and security, it would be advisable to adopt this thorough method, and to make decisions regarding deployment at a sensitive site, safeguarding of a holy place, and prevention of inter-religious and international complications, in a more thorough manner, which is usually the safest as well.

9. Carrying weapons in the Tomb of the Patriarchs and the arrangements for prayer services

85. In Chapter 3.5 (of the full Report, in Hebrew), we specified the instructions regarding the carrying of weapons into the Tomb of the Patriarchs. There we reviewed the change in orders, whereby army personnel, Kiryat Arba residents and other Israelis were gradually allowed to carry weapons inside the Tomb of the Patriarchs. From what we stated there, the fundamental change in instructions was made after the Bet Hadassah murders.

In the past few years, permission was granted to Israelis carrying weapons to bring them into the Tomb of the Patriarchs; except for a period when, in effect, carrying weapons there was temporarily halted at the initiative of the commander of the Tomb following a number of incidents in which IDF soldiers were threatened with weapons by extremist Jews.

86. As a rule, weapons should not be permitted in a place of prayer. However, carrying weapons inside the Tomb was a result of the security situation in the area. Not just since the beginning of the Intifada, but even before then, there were fatal attacks on Israelis (the Bet Hadassah murders, the murder of Aharon Gross, et al), which led most the Jews who travelled in and around Hebron to carry weapons on a regular basis. Moving around without a weapon created a personal risk. Whereas the security force in the Tomb of the Patriarchs did not cover, due to its limited number of personnel, all the halls and other areas of the Tomb, the times of Jewish and Muslim services coincided more than once, and there was no ban on Muslims entering the Tomb while Jewish services were going on. Thus, it was reasonable not to disarm the Jews upon entering the Tomb, so as not to leave them vulnerable.

87. They were, however, requested to move the magazines from their weapons, and were forbidden to carry a cocked weapon. This regulation was not enough to prevent the use of a weapon since the magazine could have been put in, and the weapon cocked, on the spot.

88. The presence of people carrying weapons inside the Tomb did indeed create a risk that weapons would be used in the event of a flare-up, where the person carrying the weapon was not rational in his behaviour.

89. None the less, there existed, as mentioned previously, a personal risk [to Jews] in moving around the city and the Tomb without a weapon. In the past, the scales tipped in favour of adding more weight to the issue of personal risk, and to the administrative difficulties entailed in leaving weapons at the entrance to the Tomb. Therefore, weapons were allowed to be brought into the Tomb.

90. However, the lesson learned from the massacre is that upon reopening the Tomb, weapons should not be permitted. Alternative means must be found to provide personal safety both the Jewish and Muslim worshippers, and this can be achieved by increasing the internal security force in the Tomb and by other means. In other words, the case before us illustrates that it is appropriate to reinstate the ban on carrying weapons inside the Tomb and to require that all weapons be handed in [to security personnel] before entering the Tomb of the Patriarchs. At the same time, security procedures, to be specified in our recommendations below, should be implemented inside the Tomb of the Patriarchs, which would make it unnecessary for Jews to carry weapons inside the Tomb, and which would enable effective security to be maintained in another way. In this way, the use of weapons inside the Tomb for harmful purposes will be prevented.

91. It should be added that the arrangement permitting Kiryat Arba residents or other Jewish citizens to carry weapons into the Tomb of the Patriarchs is not what made it possible for Goldstein to commit the massacre. Goldstein did not rely on this permission, and he wore his army uniform with the insignia of

rank, creating the image of a reserve officer on active duty. As someone who served in the Brigade, he would not have been prevented from carrying a weapon inside the Tomb, even if an ordinary citizen would have been prevented from doing so under the same circumstances.

92. To conclude this point: we think that when the Tomb of the Patriarchs reopens, it will be necessary to adopt arrangements, specified in the chapter on recommendations, which will prevent citizens and soldiers, not serving on the staff of the cave or on guard duty, from carrying weapons inside the Tomb.

93. To remove any doubt, it should be made clear that army personnel - except for the staff of the Tomb of the Patriarchs and its guards - will also not be permitted to carry weapons inside the Tomb.

94. Arrangements for Jewish and Muslim prayer services in the Tomb of the Patriarchs were organized according to a division of the site according to various Halls. With regard to the Isaac Hall, this involved the presence of Jews and Muslims in the same hall at the same time, and sometimes there was a continuous chain of alternating Jewish and Muslim services in the same hall. The separation of Jews and Muslims in the Isaac Hall was accomplished by way of metal dividers which did not prevent passage from one side of the partition to the other, nor did they prevent the prayer services or conversation on one side, from being heard on the other.

95. There was, therefore, friction due to complaints about the disruption of services, the sudden appearance of a large number of Muslims behind the dividers in the Isaac Hall during Jewish services and the like. The Muslims, on their part, complained that rugs were damaged (by pouring acid on them), and those responsible have yet to be caught.

96. As mentioned previously, services were held simultaneously in different halls. However, as the inquiry into the case before us indicates, there was no effective barrier preventing passage between the halls or opening of the doors; yet the plans for guarding the Tomb required the posting of one Border Policeman in the Abraham Hall, adjacent to the door of the Isaac Hall, and two Border Policemen at the main entrance to the Isaac Hall.

97. It should be noted here that the military authorities had in the past asked to install locks on the doors between the halls, and at a certain stage there was even a decision to use electronically closing doors, but the Waqf objected to it.

98. A lesson learned from the massacre, and also from past experience, indicates that the prevention of friction and disputes requires effective separation of the worshippers of both religions. In our recommendations, we will make a number of suggestions regarding this matter.

99. On this issue we learnt from the testimony presented before us, primarily by those who in the past had served as commanders of the Tomb of the Patriarchs, in various periods, during which there were worshippers from both religions who were extremists and who engaged in brinkmanship, in order to encroach upon the other religion's prerogatives (on the part of the Jews, for example, opening the doors in contravention of arrangements governing times

when the other religion's services are in progress, breaking rules and not accepting the authority of the commander of the site or the guards on duty; on the part of the Muslims, for example, directing a funeral through an area where the services of the other religion were going on). Preventing incidents such as these is, of course, the duty of the guard in the Tomb of the Patriarchs. However, it would also be appropriate to adopt a decisive policy - previously used to a limited extent - which in principle prohibits entry into the cave of anyone threatening security and order by provocative behaviour. There is no room for compromise in any matter related to permitting entry to violent and aggressive elements. Anyone who does not accept the army's authority in full, or who disrupts established practices, or who harms other worshippers and who acts provocatively, must be prohibited from entering the Tomb as a security precaution, and if circumstances warrant it, he should be prosecuted.

100. The conclusions here lead directly to the next issue: soldiers doing their compulsory service or on active reserve duty who come to the Tomb of the Patriarchs for designated periods often find it difficult to contend with the problems that arise in a sensitive place such as this. Moreover, orders that would have been easily carried out before the massacre, will be more difficult to implement following it, notwithstanding the uncertainty over what form the conflict between the two religions will assume in the future. For the reasons mentioned above, an extensive deployment of guards will in the future be necessary in all of the halls of the Tomb of the Patriarchs, both when prayer services are in progress, and when no worshippers are in the Tomb.

101. At the same time, alongside the determination to follow guidelines, the guard detail must have understanding, experience in dealing with worshippers and visitors, including a generous approach, good manners, an ability to handle sensitive situations and a respectable appearance in order to instill a sense of authority.

102. Therefore, we will propose in our recommendations the idea of a permanent "Tomb Guard" which will oversee the security of the inside of the Tomb of the Patriarchs, providing stability to this force, and enabling it to rely on veteran officers with more experience in overseeing prayer services and visits.

10. Regulations governing opening fire

103. The regulations governing opening fire were raised before us numerous times after it was first mentioned in Colonel Meir Kalifi's statement, in Colonel Galant's report and later by Deputy Commander Meir Tayar in his testimony before us.

104. The intention of those who set the regulations for temporary procedures relating to disturbances was to cover circumstances in which Jews were involved in disturbances (demonstrations, blocking intersections, settlements without IDF approval, etc.). The evidence does not suggest that anyone intended to prevent security personnel from opening fire on an individual who was committing a serious crime. In the latter circumstances, the general instructions on opening fire in the case of life-threatening or serious crime apply. In such cases, opening fire is permissible if there is a reasonable

concern that failure to take this exceptional measure, which is equal in severity to the damage that is trying to be prevented, will result in a threat of loss of life or bodily harm. These instructions are based on what is stated in sections 22 (self-defense), 22a (necessity) and 22b (exceptions) of the Penal Law, 5737 - 1977, and regarding military offences committed by someone subject to military jurisdiction, are based on sections 17(17) and 17(18) of the Military Judgement Law, 5715 - 1955. With regard to opening fire, the interpretation of the court which limits and restricts the action, is formulated in the decision of this court, in First Sergeant David Anconina v. Chief Military Prosecutor, 88/468, P.D. 44(2) 353, p. 372, and applies, where the practice in use until then was condensed according to the decision in the case of Gold v. the Attorney General 53/57, P.D. 7, p. 1126.

105. The instruction, in accordance with its heading, was not intended by those who gave it, nor did have it as its purpose, to allow for deviations from the norms which apply under Israeli law.

106. The special constraining instructions regarding firing on Jews in the event of disturbances were required also by the objective circumstances in Judea and Samaria; Arabs are forbidden to carry arms. Israelis are permitted to carry weapons, and this is even essential due to the security situation which prevails in the area. When a soldier appears on the scene and sees a Jew aiming his weapon to fire, he usually cannot know on the spot - without any explanation - if the individual is shooting in response to something else, in self-defense against a terrorist attack, or if it is premeditated shooting directed at something and initiated by the gunman, which would be viewed as an offence for which there is no defense under the principles of criminal responsibility as set out in the Penal Law, 5737 - 1977.

107. On the other hand, if a soldier sees an Arab resident carrying a weapon and shooting, the factual assessment of the situation is that he is shooting in order to carry out an attack.

108. The differences in these potential circumstances formed the basis of the instruction; however, the method in which this was conveyed to the soldiers, and even more so, the explanation given to the soldiers were lacking. They created confusion between cases of public disturbances, and cases where criminal offences were being committed, between shooting in self-defense and shooting intentionally at a soldier or other person, Arab or Jew, who was not a threat to the soldier.

109. In Chapter 6, we made it clear that a simple instruction should have been formulated, most importantly, one that was clear and understandable by all those to whom it was directed; the required clarity should, of course, also convey the purpose of the order, as well as the constraints dictated by the guidelines. Instructions governing opening fire cannot be ambiguous, or open to different interpretations. When it becomes apparent that the instructions are not clear, they should be amended immediately.

110. We have already noted that there is no justification for different guidelines for opening fire in cases of disturbances and criminal offences. That is to say, different guidelines for the IDF and for the Israel Police.

111. Naturally, none of this can take away from the requirement to issue special military orders with regard to the rules which apply in cases such as ambushes or other military operations.

112. What was not done when the guideline was initially set forth must be done now. In other words, it is necessary to issue a clear and understandable guideline whose language corresponds to what is valid according to the law which applies in Israel, while also corresponding to the authority of the soldier serving in the territories as an enforcer of the law.

11. Law enforcement

113. Shortcomings were discovered in the area of law enforcement, the details and implications of which are dealt with in detail in Chapter 5 [of the full Report, in Hebrew] above.

114. We accept the premise that in the absence of effective law enforcement, there can be no effective government. In an atmosphere where every man does as he sees fit, without taking a real risk that he will bear the consequences if he deviates from what is permitted, the proper functioning of the authorities responsible for efficient control on the ground, is impaired. The Supreme Court noted years ago that the rule of law is not an artificial, ephemeral creation. It must have tangible and daily expression in the very existence of binding normative arrangements, and in their practical application to all (High Court of Justice 428/86, Barzilai v. the Government of Israel, P.D. 40(3), vol. 505, p. 554). Insistence upon equality, and upon the creation of a general atmosphere of trust and security, are basic requisites for the existence of the rule of law. As it is stated there:

> "Orderly government without dedication to the rule of law, is inconceivable, for it is the rule of law which builds the bulwark against anarchy, and ensures the existence of order within the state. This order serves as the basis for political and social structures, and for the safeguarding of human rights. These do not exist in an atmosphere of lawlessness. National security also relies upon the rule of law, both in its ensuring domestic order, and as an expedient in creating the means with which to contend with threatening elements. There can be no organized action by any social unit, nor can there be discipline, without normative standards, drawing upon the binding legal directives" (p. 555).

115. With regard to the issue of law enforcement, a number of actions need to have been taken: (a) ongoing and efficient coordination between the bodies involved in investigation and bringing to trial, i.e. the army and the police; (b) the establishment of procedures and directives regarding investigation and adoption of legal action; (c) constant follow-up of investigations and their results.

116. In the material brought before us, we found no information regarding efforts during the years 1981-1988 to prepare coordination procedures; the first topic mentioned above. Though practical proposals were raised by the Attorney General, in a letter dated 16.5.83, to the Minister of Defense, it appears from the material presented to us, that written procedures were drafted only in September of 1988.

117. The follow-up of cases under investigation did not include examination of each individual file. Dissatisfaction with the disposition of cases was therefore, based upon statistical data, and not necessarily upon actual examination of each and every file in order to determine from the file itself whether to adopt the police recommendation to close the case, or whether to indict based upon the material gathered. It is regrettable that no authorized body carried out a detailed review of the cases closed, in order to prevent unfounded decision - if any existed - and to exert influence, by the very existence of a monitoring and controlling body, upon the nature of the decision taken in actual cases. General comments, including expression of dissatisfaction with the situation, could have had only a partial effect upon changing it.

118. The conclusion which arises from the material before us is that a number of circumstances combined to hinder law enforcement: lack of coordination between the army, the Civil Administration and the Police; the weakness of the Police in terms of the shortage of manpower allocated to operations in the territories, and particularly a shortage of investigation personnel; the objective difficulties faced by the investigating bodies, operating in an area subject to the Intifada; the lack of expertise among the soldiers in handling primary investigation of criminal incidents.

119. The Police operated with limited manpower, especially after most of the policemen resident in the territories, resigned. The overall conditions in the territories also hindered the Police's ability, as described in Chapter 5 [full Report, in Hebrew].

120. A misconception arose, according to which local victims of crime had only themselves to blame, if by their behaviour (such as endangering police officers trying to carry out their duty), they obstructed police investigations.

121. The Police also believed that it had no obligation to investigate unless the victim of the crime personally filed a complaint, and that a complaint filed by a soldier who witnessed the crime for example, was not sufficient. This approach is contrary to the one accepted under our law regarding the manner of opening an investigation, as it finds expression in the Criminal Procedures Law (Consolidated Version), 5742 - 1982, and is also contrary to common sense, particularly in circumstances in which there is reason to assume that the victim fears filing a complaint with the police. This approach caused frustration and provided a distorted picture of the method of law enforcement, both among soldiers who filed complaints as eye-witnesses to crimes, and among the potential complainants, tarnishing the image of the military government as the body responsible for law enforcement. It also constituted a sort of voluntary abdication of effective control on the ground. On the other hand, the reduction of effective action against the active elements of the Intifada (such as throwers of rocks and Molotov-cocktails), provided fertile ground for claims by Jewish residents that equality seemed to have disappeared with regard to law enforcement against the disturbers of the peace among them, in response to incidents of the Intifada.

122. The answer to these difficulties in our opinion, is clear and simple: the law must be enforced with rigour, decisiveness and equality, against

anyone who breaks it, and no one can excuse his actions with the fact that another crime has been committed and that its perpetrator was not caught or prosecuted. There is no principle whereby investigation and punishment of crimes must be carried out in accordance with the order in which they were committed.

123. This is not to detract in the least from the duty to eliminate attacks against Jews, from shooting to rock-throwing.

124. The investigation of Israeli citizens is, in accordance with the existing allocation of authority, the jurisdiction of the [Israel] Police, and the authority to try them lies with the Israeli courts. In order to achieve sufficiently thorough investigation, the police must allocate appropriate manpower, numerically speaking, and assign suitably trained personnel to the tasks. Detailed coordination procedures between the IDF and the Police should include [clear] definition of the areas of responsibility and modes of cooperation and coordination between them - including the receipt of army reports regarding criminal activity. The taking of Statements from soldiers, the gathering of evidence at the scene of the crime, etc.

125. Policy regarding all aspects of criminal investigation and prosecution must be identical to that applying to crimes committed in any other area administered by the authorities of the State of Israel.

Chapter 9. Recommendations

1. Arrangements for prayer and for security at the Tomb of the Patriarchs

126. In accordance with the fundamental principles, which lie at the heart of the prayer arrangements at the Tomb of the Patriarchs, both Muslims and Jews may pray at the Tomb. We accept these principles. Nevertheless, in light of the lessons to be drawn from the massacre, it is necessary to cancel or to change some of the practical arrangements which were in force in the past. In our recommendations, we were guided by the following principles: first, it would be wise to prevent friction between Jews and Muslims, arising among other reasons, from the fact that prayers are held alternately in the same places, and Jewish and Muslim worshippers come into contact with each other, due to a tight prayer schedule, (in itself) the result of the fact that worshippers share the same prayer halls at short intervals. This at times has resulted in power struggles which should be prevented; second, the possibility of an attack by Jews against Muslim worshippers must also be taken into account, and not only the contrary, which is as it was in the past. Perhaps the danger of such attacks has even increased; third, sophisticated electronic security devices should be installed; fourth, it will be necessary to station a permanent force on security duty, trained to handle the sensitive and unusual circumstances which arise at a place of worship, which is sacred to the two religions.

127. Based upon these premises, we recommend, first and foremost, that arrangements intended to create complete separation between the Muslim and Jewish worshippers be adopted, in order to ensure the safety of all worshippers, and to prevent friction, disputes and acts of violence.

128. We do not believe that the Commission of Inquiry can, or should in this case, work out a detailed proposal, based upon the allocation of places of worship within the Tomb, and the demarcation of [prayer] schedules; this is so, since such a detailed plan should be worked out on the ground, following attempts to conduct a dialogue with the religious bodies concerned. We will indicate here only guidelines, according to which the framework of the proposed arrangements will be constructed. They are the following:

1. (aa) Separate entrance gates will be set aside for Muslim and Jewish worshippers.

(bb) At the entrance gates to the Tomb, sophisticated detection and surveillance devices will be installed, in order to monitor everyone entering [the Tomb]: worshippers and visitors, Jews and Muslims.

(cc) Jewish and Muslim worshippers will be separated from each other, and members of one religion will not be permitted to enter an area in which prayers of the other religion are taking place at that time.

(dd) If required for security reasons, in the opinion of the commander of the Tomb, he may prohibit entry of worshippers entirely, at a specific time.

2. Concerning the implementation of arrangements for separate prayer, the following two alternative proposals were raised during discussions by the Commission, regarding the method of separation at the prayer sites. We recommend examining each of the proposals, and choosing the one which is most feasible, and which provides the greatest possible safety for all worshippers.

129. The first alternative is based upon holding prayers at separate times, in such a manner as to ensure that Muslim prayers will not take place at the same time that Jewish services are being held. Moreover, members of one religion will not be allowed to enter the Tomb while prayers of the other religion are taking place in any of the prayer halls. In other words, Jews and Muslims will not be present simultaneously in the Tomb.

130. The second alternative is based upon the possibility of conducting prayers simultaneously, but in separate halls. Complete separation would be ensured by implementing the following principles:

(1) The presence of a member of one religion in a hall in which prayers are being held by the other religion will be prohibited.

(2) Installation of electronic devices, which would prevent passage from one hall to another (e.g. effective closure of doors, etc.). Doors at the gates and between the halls will possess, to the extent possible, electronic systems, controllable from a central location. Doors will be added if needed (e.g. in the passage between the plaza and inner courtyard).

(3) Deployment of an appropriate internal security force, which would completely prevent passage from one prayer hall to another.

131. Regarding the second alternative above, we would like to add for the sake of clarity: the proposal's point of reference was that there is nothing to prevent any prayer hall in the Tomb, sacred to the two religions, and used according to the status quo in the Tomb for public worship on specific days, from being used in the future as well, under the same conditions in force today; this however, only on the condition that there be a buffer of at least one hour between the end of one religion's prayer service and the beginning of that of the other religion.

132. This proposal does not recommend that any part of the Tomb which could be used by members of both religions, be placed out of bounds; subject to the arrangements and restrictions now in force. However, when the same hall serves members of both religions at different times, it must be ensured, as stated above, that at least one hour pass from the end of the prayer service of the first group.

2. The Tomb guard unit

133. Security outside the Tomb will be provided by a regular army unit or by a reserve unit.

134. A special unit will be established to serve as the "Tomb Guard". This unit will be responsible for security at the entrance gates and inside the Tomb. The unit will operate within the framework of the IDF (Military Police or other unit), or the Border Police.

135. Members of the force will serve at the Tomb for a minimum of one year, unless it is decided to change the deployment, or to shorten the service of a particular guard.

136. Members of the "Tomb Guard" will have the authority to make arrests, as does any soldier or policeman.

137. Members of the guard will be carefully selected. They will be trained for their sensitive duty, and their physical appearance, discipline, and courteous deportment toward worshippers, will be ensured.

138. The force, as stated, will be deployed at the gates and throughout the Tomb. It must therefore be large enough to cover the entire area of the Tomb. Security in any given hall will be provided at all times by at least two soldiers working together, and not by a single soldier.

3. Carrying weapons inside the Tomb of the Patriarchs

139. Our recommendation is that entry into the Tomb by individuals carrying weapons be absolutely prohibited and that civilians or soldiers not carry weapons inside the Tomb, except for the special security force operating inside the Tomb or for a backup unit which is called in the event of an emergency.

140. Arrangements for depositing weapons at the entrance to the Tomb should be made. They will apply on Saturdays and holidays as well.

141. Responsibility for overseeing the depositing of weapons will lie with the commander of the Tomb who will be assisted by the guard unit.

4. Security supervision at the Tomb of the Patriarchs

142. During an emergency, the guard unit will operate as an additional backup and alert force outside the Tomb.

143. Effective devices for detecting weapons should be posted at the gates.

144. In the event of life-threatening situations (fire, attack etc.), exit via all gates will be possible.

145. All activities in the Tomb will be adequately monitored by closed circuit television. The closed circuit television system will have audio and video recording capabilities.

146. First aid procedures in the Tomb will be established and fire extinguishing and first aid equipment will be available on the site.

5. Visits to the Tomb of the Patriarchs

147. Visitors will be permitted to enter the Tomb during designated hours, but the commander of the site can decide that the number of visitors at a given hour will be limited, as circumstances and events dictate. If, in his opinion, security concerns require it, the commander of the Tomb may prohibit altogether the entry of visitors for a specific period.

6. Enforcement of the law

148. It will be established in the procedures that the full authority over, and responsibility for, investigating and trying Jewish residents and other Israelis, lies with the Israel Police. There will be no change in existing procedures in this matter with regard to other residents of Judea and Samaria.

149. All aspects of the role of the Police should be clearly defined and sufficient manpower should be allocated to enable them to fulfil their functions.

150. Coordination between the army and the Police should guarantee military assistance for the police either by providing military escorts or in other ways, and by establishing a steady flow of information on offences and maintaining order, which will facilitate Police investigations.

151. It is suggested that the budget for Police operations in the territories be included directly in the overall Police budget, thereby freeing the police from dependency on the Civil Administration budget.

152. To open a case, the rules set forth in the guidelines of section 59 of the Criminal Procedure Law (consolidated version), 5742-1982, will apply, according to which the Police open an investigation when they are informed of an offence in any way, not only when the injured party lodges a complaint.

153. The handling of investigations, including the guidelines for closing a case due "to lack of public interest", or to insufficient evidence, will be done according to the rules designated in the law mentioned.

154. It is proposed that the Attorney General establish procedures for coordination between the Police, the State Attorney General's office and the District Attorney's office which will guarantee supervision and follow-up of cases, including overseeing every decision regarding the closing of a case, the issuance of indictments, and the conduct of court proceedings. The Attorney General will designate an individual to conduct this monitoring.

155. The Police will look into the possibility of opening a Police station in every major Jewish settlement in Judea and Samaria.

156. Since law enforcement is the central role of the Police, and since policemen are better trained in handling disturbances of the peace, it will be preferable, whenever possible, to employ Police officers (including Border Police), to deal with disturbances on the part of Jews, rather than regular army personnel or reservists.

7. Use of weapons

157. It is suggested that the open fire instructions be reformulated in a clear manner, with reference to disturbances and violent offences.

158. In Judea and Samaria, a standard version of the regulations governing opening fire will be set out, which both the IDF and the Police will follow.

159. It is suggested that an order be issued stating that a citizen who uses a weapon in his possession, must immediately report his use of his weapon at the police station nearest to where the incident occurred, or to his home.

160. At least once a year, or after unusual events, a review will be conducted of the policy of distributing weapons to the Jewish citizens of Judea and Samaria.

8. Briefing and relaying intelligence

161. Intelligence activity is essential as a means of preventing organization by terrorist groups, which by its nature is conducted in secret. However, it is suggested that in each case, the military, Police or command level beyond which the warning information will not be passed, be considered. This should also be expanded to include the briefing of lower level Police or army echelons than is the practice today, in order to enhance their understanding of terrorist acts and their ability to prevent them.

9. Disciplinary and organizational conclusions

162. There is nothing in our recommendations detailed above which detracts from the obligation of the relevant authorities to identify the disciplinary and organizational deficiencies and weaknesses detailed in this report, and to take the necessary steps required to remedy them.

Chapter 10. Epilogue

163. The massacre at the Tomb of the Patriarchs in Hebron was a base and murderous act, in which innocent people bending in prayer to their maker were killed. It is an unforgivable act, which caused inconsolable grief to the families of the fallen and injured victims, several of whom were permanently disabled.

164. The massacre was one of the harshest expressions of the Jewish-Arab conflict.

165. We were asked to investigate the massacre and to determine findings and draw conclusions regarding the circumstances related to it. Thus, in our investigation, we covered the circumstances surrounding the massacre and its results, and we also dealt with certain general issues which, while not directly related to the massacre, were part of the circumstances indirectly related to the event. We discussed these issues in an effort to remove every obstacle and impediment to, and to assist in the maintenance of, the just administration of government.

166. We presented the lessons which must be learnt from this tragic incident so that, as far as possible, the repetition of criminal acts such as these can be prevented. We made a series of recommendations meant to assist in returning things to normal both in the Tomb of the Patriarchs in particular, and generally in Hebron.

167. Let us hope that our inquiry and our report will indeed contribute to that end.

Chapter 11. Publication of the report

168. According to the guidelines set out in section 20(1) of the Commission of Inquiry Law, this report will be made public after it is submitted to the Government. The report submitted to the Government will include the protocol of our hearings, as well as all exhibits.

169. The protocols of the Commission's discussions were taped in full in accordance with the decision of the Chairman of the Commission. The protocols of the open sessions and the exhibits not classified for reasons of State security will be open for the review of anyone interested. In accordance with regulation 8(2) of the Commission of Inquiry Regulations (Procedures), 5730-1969, we have decided that the right to review the protocol of the closed sessions and the exhibits that are classified for reasons of State security will be given to whomever the Cabinet decides.

170. This report was signed on 13 Tamuz 5754 - 26 June 1994.

Meir Shamgar	Eliezer Goldberg	Abd el Rahman Zouabi
Commission Chairman	Commission member	Commission member

Menachem Yaari	Moshe Levy
Commission member	Commission member

III. MEMORANDUM OF UNDERSTANDING ON THE ESTABLISHMENT OF A TEMPORARY INTERNATIONAL PRESENCE IN HEBRON

The Temporary International Presence in Hebron (hereafter referred to as TIPH) is established under the Agreement between Israel and the Palestine Liberation Organization on security arrangements for Hebron of 31 March 1994 (hereafter referred to as "the Agreement"). The Agreement contains the terms of reference for TIPH, and sets out its mandate in particular as set forth in paragraph A.3 of the Agreement. Its area of operation will be in accordance with the attached map.

The participation of Denmark, Italy and Norway is limited to a period of three months. Any prolongation could only be considered in accordance with paragraph A.10 of the Agreement.

A. Organizational structure

1. TIPH will consist of 90 members from Norway, 35 from Denmark and 35 from Italy; 60 shall be field observers, and the rest shall be office staff and support personnel.

2. All members of TIPH will operate under an integrated command structure. Office staff, support personnel and field observers shall have an equal status as members of TIPH.

3. The Head of Mission (hereafter referred to as "HOM") will be appointed by Norway. He will work in close cooperation with two Deputy Heads of Mission (hereafter referred to as "DHOM"). Important decisions on matters of principle or internal policy will be made by the three jointly. The HOM will have the authority to direct and instruct all personnel assigned to him as he may deem necessary to accomplish the mission.

4. The DHOM, with equal status, will be appointed one by Denmark and one by Italy. A TIPH staff will be established to assist the HOM and DHOM. The DHOM will primarily be responsible for personnel/logistical matters and operational/civil affairs respectively.

5. Each contributing country may appoint, among its personnel, a contingent representative responsible for practical and administrative matters concerning his national contingent.

6. In the relationship between the TIPH contingencies ultimate decision-making authority in TIPH matters remains with the Governments of the three participating countries. In matters which require decisions by the three jointly, consultations will take place urgently.

7. In the city of Hebron the members of TIPH will wear a white uniform with an emblem consisting of the letters TIPH. The 60 observers will also wear arm-bands marked "Observers" in English, Arabic and Hebrew.

8. TIPH will provide its members with an ID card in English, Arabic and Hebrew.

9. The working language of TIPH is English. Qualified interpreters will be TIPH employees from the contributing countries.

10. TIPH headquarters and accommodations will be established in premises in the city of Hebron.

B. Operational guidelines

1. As foreseen in the Agreement, TIPH will maintain close coordination with the Mayor of Hebron and the Head of the Civil Administration in the District of Hebron.

2. TIPH will elaborate daily situation reports based on human rights standards. TIPH will report to the Joint Hebron Committee according to paragraph 5 in the Agreement. These situation reports could also be forwarded to the Chair of the Ad Hoc Liaison Committee of donors (hereafter referred to as "AHLC"). The Chair of AHLC will promptly transmit these reports to each of the contributing countries. TIPH will report every second week to the Joint Israeli Palestinian Liaison Committee and to AHLC.

3. Members of TIPH will enjoy freedom of movement for the performance of their tasks in the city of Hebron. In case of any restrictions in accordance with paragraph A.7 of the Agreement, orders to that effect must be approved by the military commander of the Hebron area. Such restrictions will always be reported from TIPH to the Chair of AHLC, to the Joint Hebron Committee and to the Joint Palestinian Israeli Liaison Committee. Members of TIPH will not enter privately held areas in the city of Hebron or military camps and security installations without specific permission from the holder or from qualified military security personnel.

4. In order to execute its mandate, TIPH will establish the necessary links and modalities of cooperation with ICRC regarding prisoners and their records.

5. As a basis for its reporting activities (not for public use), TIPH may use necessary equipment, including photo and video equipment.

6. For the purpose of entering and leaving the area the necessary arrangements will be made according to the Agreement.

7. Members of TIPH will not interfere in disputes or incidents. Disputes or incidents will be reported immediately to HOM.

8. Internal safety measures will be taken, after appropriate coordination, by TIPH to protect its personnel in their functions on and off duty.

C. Logistics and support

1. The TIPH will set up an internal communication network (mobile-transceivers, in all vehicles and to members of TIPH). It will also be provided with an external communication set-up: telephones, fax and satellite communication. The Israeli authorities will allocate the necessary frequencies.

2. A logistics and support organization will be set up, including the necessary staff and equipment.

3. In meeting the logistical needs, such as housing, food, fuel, repairs, medical services etc., the TIPH may make use of local resources. The employment of local personnel will be coordinated through the Joint Hebron Committee.

4. All TIPH vehicles will be equipped with special license plates. TIPH vehicles used for the performance of its function in the city of Hebron will also be marked with emblems. TIPH vehicles will carry only members of TIPH.

D. Privileges and immunities

1. In the area of, and in connection with its activities, TIPH shall enjoy such privileges and immunities as are necessary for the fulfilment of its task including immunity of its premises. Similarly it shall enjoy privileges and immunities necessary for the independent exercise of its functions.

2. Members of TIPH shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions in their official capacity, including the time spent on journeys in connection with their mission. In particular they shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) In respect of words spoken or written and acts done by them, immunity from legal process of every kind. Such immunity shall continue irrespective of the cessation of their mission;

(c) For the purpose of their communications with the respective Governments, the right to use codes and to receive papers or correspondence by courier or in sealed bags. No official communication directed to the TIPH or to any of its staff members, nor any outward official communication of TIPH, by whatever means or in whatever form transmitted, shall be detained in any way or suffer any interference with its confidentiality;

(d) The same immunities and facilities in respect of their personal baggage as accorded to diplomatic envoys.

3. Privileges and immunities are granted to members of TIPH in the interest of the fulfilment of the Hebron Agreement and not for the personal benefit of the individuals themselves. The immunity of any staff member may be waived by the sending State.

4. The States participating in TIPH and members of TIPH shall not be liable for any act or omission performed under the terms of this MOU, except in case of gross negligence or wilful misconduct.

E. Final provision

This Memorandum of Understanding enters into force on the date of its signature, and shall, subject to the provisions of paragraph D.2(b), remain in force for the three months duration, or any agreed upon prolongation, of the Temporary International Presence in Hebron.

Done at Copenhagen May 1994 in three originals in the English language

For the Government of Denmark	For the Government of Italy	For the Government of Norway
_____	_____	_____

UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/283
19 April 1995

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

Documents submitted in compliance with a request of the Committee under article 9, paragraph 1, of the Convention*

NIGERIA

[13 March 1995]

1. The Nigerian Police Force has always, as expected, been drafted into situations of uprising, riots and circumstances of violence and has always coped within the available resources. The contents of their training, in view of their responsibility and duty to the society, take cognizance of the principles of fundamental rights as enshrined in the 1979 Constitution of the Federal Republic of Nigeria. Indeed, at the level of the Police College training, the curriculum includes teaching the promotion and protection of human rights.

2. Bearing in mind that problems of law enforcement exist in every society, some time in the past, some states in Nigeria witnessed inter-communal riots, civil unrest and even violent protests, and the Nigerian Police Force was able to provide the much-needed security and adequately met the situation.

Article 5 of the Convention

3. It is necessary to reiterate, as already stated in the thirteenth report, that Decree No. 107 of 1993 did not erode the fundamental rights enshrined in the Nigerian Constitution. The different rights listed in the report as contained in sections 30-40 remain protected in the Constitution as follows:

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* The present document contains additional information pursuant to a request of the Committee in its concluding observations adopted on 17 August 1993.

(a) The right to equal treatment before the courts and all other organs administering justice;

(b) The right to the dignity and security of person and to protection by the State;

(c) Political rights, in particular the right to participate in elections on the basis of universal and equal suffrage and other rights such as the rights to freedom of movement and residence and the right to own property alone as well as in association with others.

4. Furthermore, Nigeria, in compliance with article 5 of the Convention, promotes and protects the categories of rights under the African Charter on Human and Peoples' Rights, being a party to the Charter. The rights, if and when cited before any Nigerian court, are recognized and upheld.

Ethnic composition

5. As already stated in the thirteenth report, Nigeria conducted a census in 1991, the results of which, when officially released, would provide a detailed demography of the country and the ethnic composition would be properly represented. Further information on the country's population, which is available and provided below, shows the different regions, states and local government authorities:

Region	State	Local governments areas	1991
	Nigeria	593	88 514
	Bauchi	23	4 294
	Borno	21	2 597
	Yoba	13	1 411
	Adamawa	16	2 124
	Taraba	12	1 481
Northern Region	Niger	19	2 482
	Sokoto	29	4 392
	Kebbi	16	2 062
	Kwara	12	1 566
	Kogi	16	2 099
	Benue	18	2 780
	Plateau	23	3 284
	Kano	34	5 632
	Jigawa	22	2 830
	Kaduna	18	3 969
	Katsina	25	3 878

Region	State	Local governments areas	1991
Eastern Region	Anambra	16	2 768
	Enugu	19	3 161
	Imo	21	2 485
	Abia	17	2 294
	C. River	14	1 866
	Akwa	24	2 360
	Rivers	24	3 984
Western Region	Ikeja		
	Oyo	25	3 489
	Oshun	23	2 203
	Ondo	26	3 884
	Ogun	15	2 339
Mid-Western Region	Edo	14	2 160
	Delta	19	2 570
Lagos	Lagos	15	5 686
	FCT	4	379
4 Regions and Lagos	30 States and FCT	593 LGAS	30 States and FCT

Article 6 of the Convention

6. The Nigerian Constitution in its section 42, which was extensively quoted in the report, gives special jurisdiction to the High Court as follows:

"1. Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

"2. Subject to the provisions of this constitution, a High Court shall have original jurisdiction to hear and determine any application made to it, in pursuance of the provisions of this section, and, may make orders, issue such writs and give such directions, as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any rights to which the person who makes the application may be entitled under the Chapter."

7. Apart from the State High Court, other courts of the land, as empowered by the Constitution and other state institutions, are open to anyone within Nigeria to seek redress, remedies and compensation.

The Nigerian Criminal Code

8. As stated in our report, the Government of Nigeria had put in motion the process of law reform whereby the whole gamut of Nigerian laws would be considered. In particular, a committee was set up on the reform of criminal laws and procedure. The Committee will be informed as soon as the final report is out with all the relevant amendments.

9. In spite of the foregoing, however, it is important to reiterate that the provisions of section 39 of the Nigerian Constitution adequately exclude any form of discrimination.